

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. The California Department of Social Services (CDSS) is responsible for the administration of financial audits for licensed group homes and foster family agencies pursuant to Welfare and Institutions Code Section 11466.21.
2. Federal law allows for federal financial participation for these financial audits, as well as for the operations, including the care and supervision of children of group homes and foster family agencies.
3. The federal Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), is the cognizant federal agency for determining California's eligibility for federal financial participation in the Title IV-E Foster Care Program, which includes group homes and foster family agencies.
4. The CDSS received a letter dated April 19, 2001 from Sharon Fujii, Regional Hub Director of the DHHS, ACF. In this letter, Ms. Fujii states that the type of audit California has implemented does not meet the audit standard for the Foster Care Program, as required under the Office of Management and Budget (OMB) Circular A-133. Accordingly, Ms. Fujii states that California is at serious risk for all federal funding received by group homes and foster family agencies. Ms. Fujii further writes that California's current audit costs under Welfare and Institutions Code Section 11466.21 are not allowable under the federal grant.
5. Without these proposed rules, federal financial participation (FFP) of approximately \$207,000,000 (\$207 million) for the Foster Care Program is jeopardized for Fiscal Year (FY) 2000/01. In subsequent FYs, FFP in jeopardy could equal or exceed \$340,000,000 (\$340 million). Additionally, current audit costs under Welfare and Institutions Code Section 11466.21 will not be eligible for FFP.
6. Had the CDSS known that the audit standard required under OMB Circular A-133 was necessary to be eligible for financial participation, regulations pertaining to the financial audit would have been included in the prior emergency regulation package which implemented Welfare and Institutions Code Section 11466.21.

7. These proposed rules are necessary to implement the audit standard required by OMB Circular A-133. The nonemergency rulemaking process set forth in the Administrative Procedures Act is sufficiently lengthy that it is not possible to implement regulation changes on an immediate basis as necessary to avoid serious adverse impact on the State's fiscal welfare.
8. With respect to the proposed rules concerning program rate reestablishment for foster family agencies, unlike the rules which apply to group homes, there is no current regulatory process for the Department to reestablish the rate for a foster family agency that fails to timely comply with the financial audit requirement, but complies with this requirement at some later time. Under current rules, the Department is required to discontinue the rate for the foster family agency that fails to timely submit its annual financial audit report, and to not establish a rate until the next annual rate application cycle occurs. Application of the current rule can result in the unnecessary and harmful displacement of children in care, and can result in avoidable State and local costs associated with the removal and placement of children in care. The proposed rules will authorize the Department to reestablish a foster family agency rate when technical application deficiencies are cured, thereby avoiding the negative impact on children and the associated costs attendant to its current inability to reestablish the foster family agency rate. The nonemergency rulemaking process set forth in the Administrative Procedures Act is sufficiently lengthy that it is not possible to avoid serious adverse impact on children in care and on the State's fiscal welfare.

INFORMATIVE DIGEST

Currently, in accordance with Welfare and Institutions Code Section 11466.21, all group home and foster family agencies are required to submit independent financial audits as a condition of receiving an annual rate. Previously, California Department of Social Services (CDSS) policy determined that group home and foster family agency providers were vendors and not subrecipients of federal funds, in which CDSS regulations required the financial audit be conducted according to the Government Auditing Standards of the Comptroller General of the United States, commonly known as the Yellow Book. This audit standard is less in scope than the audit standard required for subrecipients expending combined federal funds of \$300,000 and greater.

In a letter dated April 3, 2001 from the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The CDSS was notified that group home and foster family agency providers are not vendors and instead, are subrecipients of federal funds. As subrecipients of federal funds, federal regulations require group home and foster family agency providers to comply with the federal Office of Management and Budgets (OMB) Circular A-133 audit requirements. Existing CDSS regulations only require that group home and foster family agency providers obtain a Yellow Book audit and permits these providers to have audits conducted according to the standards established by the federal OMB Circular A-133, either voluntarily or to meet the requirements of other government agencies.

In an April 19, 2001 letter from DHHS, ACF, the CDSS was informed that the type of audit California has required under Welfare and Institutions Code Section 11466.21 does not meet the federal audit standard as required under federal OMB Circular A-133. Accordingly, all federal Foster Care Program funding received by California group homes and foster family agencies is

at serious risk. In addition, California's current audit and operational costs under Welfare and Institutions Code Section 11466.21 would not be allowable for federal claiming purposes.

These regulations are necessary and should not be delayed. Immediate implementation ensures that California meets the federal audit standard for the Foster Care Program as required under OMB Circular A-133 and that Title IV-E FFP in the program is not jeopardized. Without these proposed rules, FFP of approximately \$207,000,000 (\$207 million) for the Foster Care Program is in jeopardy for FY 2000/01. In subsequent FYs, FFP in jeopardy could exceed \$340,000,000 (\$340 million). In addition, current audit costs under Welfare and Institutions Code Section 11466.21 will not be eligible for FFP.

Significant changes in these regulations include: 1) the requirement that all group home and foster family agency corporations who expend \$300,000 or more in combined federal funding in any year adhere to the audit standards contained in OMB Circular A-133; 2) the requirement for the CDSS to issue written management decisions regarding the findings in the providers' OMB Circular A-133 audit reports; 3) the establishment of an appeal process for disputed management decisions concerning disallowed costs; and 4) the creation of a rate reestablishment process for foster family agencies.

COST ESTIMATE

1. Costs or Savings to State Agencies: No fiscal impact exists because this regulation does not affect any State agency or program. These regulations do not impose additional costs to local assistance funds, as the maximum amount paid for audits will remain unchanged.
2. Costs to Local Agencies or School Districts: No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law and regulations.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state mandated local costs in these regulations which require state reimbursement under Section 17500, et seq. of the Government Code.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 11460(b), 11463, 11466.21, and 11466.22, Welfare and Institutions Code. Subject regulations implement and make specific Public Laws 98-502 and 104-156; Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations; OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Government Auditing Standards of the Comptroller General of the United States (Yellow Book); and Department of Health and Human Services, Administration for Children and Families letter dated April 19, 2001.